STRAITS SETTLEMENTS LAW REPORTS.

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[APPELLATE JURISDICTION]
HUGGARD, C.J. & MILLS, J.
December 9, 1933.

BIKARMA SINGH v. SHIVABALAK SHAH.

[SINGAPORE DISTRICT COURT IN FORMA PAUPERIS APPEAL No. 11 of 1933]

Jurisdiction of Assistant District Judge—Ordinance No. 101 (Courts), Sections 13(1) and 38(1)—Civil Procedure Code, Section 62(1).

The "amount in dispute" in Section 13(1) and Section 38(1) of Ordinance No. 101 (Courts) does not mean the aggregate amounts of the claim and counterclaim. Accordingly the Assistant District Judge has jurisdiction to try a case in which the Plaintiff claimed $90 and the Defendant counterclaimed for $41.59 and no appeal lies from his decision. His decision may, however, be reviewed.

Appeal from the decision of the District Judge that he had no jurisdiction to re-try the case as it was *res judicata*, having already been decided, with jurisdiction, by the Assistant District Judge. The facts appear from the judgment of Huggard, C.J.

N. A. Mallal for the Appellant.

S. Mitter for the Respondent.

HUGGARD, C. J.—In this action before the Assistant District Judge the Plaintiff claimed $90/– for wages and the Defendant counterclaimed for $41.59. The Plaintiff's claim was dismissed and Judgment was entered for the Defendant on the counterclaim.

The Plaintiff then applied to the Supreme Court under section 13(1) of Ordinance No. 101 (Courts) for revision of the decision and the matter came before the late Chief Justice, Sir William Murison, who held that the "amount in dispute in the action" was the amount of the claim plus the amount of the counterclaim, and as that aggregate amount exceeded $100/– the matter was one for appeal and not for revision. He also held that, for the same reason, the Assistant District Judge had no jurisdiction to try the case.

In my opinion this decision was not correct. It may, I think, be safely assumed that the attention of the learned Judge was not drawn to section 62(1) of the Civil Procedure Code, from which section it is quite clear, in my opinion, that this matter was in fact within the jurisdiction of the Assistant District Judge and was therefore a matter for revision and not for appeal.

Having, however, dismissed the application for revision, Sir William Murison went on to order a retrial of the case before the District Judge. Accordingly the case came before the District Judge and he held that, notwithstanding the order made by Sir William Murison, the matter was *res judicata* and that he could not retry it.

From that decision the Plaintiff has now appealed to this Court.

I have already indicated that, in view of the provisions of section 62(1) of the Civil Procedure Code, the "amount in dispute" in this action does not exceed $100 – and therefore, by reason of section 13(1) of Ordinance No. 101 (Courts) there is no right of appeal. This appeal must therefore be dismissed as we have no jurisdiction to deal with the matter by way of appeal.

In all the circumstances, however, we consider that the case is one in which Supreme Court should exercise its powers under section 13(1) of Ordinance No. 101 (Courts) and call for proceedings for the purpose of reviewing the original decision of the Assistant District Judge. It is true that the matter has already come before Sir William Murison for review under that section, but from what has been stated above it is clear that he did not go into the merits of the matter. It appears to me to be proper, therefore, that this course should now be adopted.

In these circumstances this appeal will be dismissed but the proceedings before the Assistant District Judge will be called for and the matter will in due course be put down for consideration before a single Judge.

MILLS, J. concurred.

Judgment accordingly.

Solicitors for the Appellant—*Mallal and Namazie.*

Solicitors for the Respondent—*Pillai & Co.*

[ORIGINAL CIVIL JURISDICTION]
MILLS, J.
December 2, 1933.

E. MOHAMEDI v. H. MULCHAND & ANOR.

[SINGAPORE CIVIL SUIT No. 731 of 1933]

Practice—Distress—Civil Procedure Code S. 738, 739.

The moveable property of the defendant was secured and taken into custody by the Sheriff in pursuance of an order of Court made under Section 689 of the Civil Procedure Code. Subsequently on the 18th September

the landlord issued a writ of distress for $520/- being arrears of rent due for 2 months at $260/- per month from the 10th day of the 5th Moon to the 10th day of the 7th Moon (i.e. from the 2nd July 1933 to the 30th August 1933). Later, on the 9th October 1933, the landlord issued a second writ of distress for $260/- being rent due from the 10th day of the 7th Moon to the 10th day of the 8th Moon (i.e. from the 30th August 1933 to the 29th September 1933).

In pursuance of an order of Court the Sheriff sold the defendant's moveable property on the 26th of October, 1933 and paid the proceeds into Court.

The landlord applied on the 4th November 1933 to be paid out of the amount in Court the respective sums of $520/- and $260/- and a further sum of $260/- the latter being one's month's rent due from the 10th day of the 8th Moon to the 10th day of the 9th Moon (i.e. from the 29th September, 1933 to the 28th of October, 1933).

The plaintiff raised no objection to the payment of the first two sums but he opposed the application for payment of the last amount on the grounds that no writ of distress had been issued in respect thereof and that on the 26th October the date of sale of the property the rent which the amount represented had not fallen due.

Held that as regards the disputed item the landlord was entitled to be paid $242.66 representing rent up to 26th October the date of the sale of the property. A landlord can recover after the property has been sold and can recover rent which accrues due after the Sheriff has secured the property.

Summons in Chambers.

Ismail for Seah Peck Seah (the landlord)

Mallal for the Plaintiff.

The arguments sufficiently appear from the Judgment.

Cur. Ad. Vult.

MILLS, J.—This is an application made on behalf of a landlord that he may be paid $260 due as rent, out of the proceeds of sale paid into Court to the credit of this action.

The material facts are as follows:—

1. On or about the 18th September, 1933, the moveable property of the defendants on their business premises were secured and taken into custody by the Sheriff in pursuance of an Order of Court made under Section 689 of the Civil Procedure Code (attachment of property before judgment);
2. On the 18th September, 1933, the landlord's agent issued a Writ of Distress in respect of arrears of rent due on the 10th day of the seventh moon (30th August, 1933);
3. On the 9th October, 1933, the landlord's agent issued a Writ of Distress in respect of arrears of rent due on the 10th day of the eighth moon (29th September, 1933);
4. On the 13th October, 1933, the Court made an order ordering the Sheriff to sell the defendants' moveable property and to pay the proceeds of the sale into Court to the credit of this action;
5. On the 26th October, 1933, the Sheriff sold the moveable property;
6. On the 4th November, 1933, the Sheriff paid the proceeds into Court.
7. On the 4th November, 1933, the landlord's agent made the present application to the Court by Summons in Chambers, supported by an affidavit whereby he claimed to be paid arears of rent up to the 10th day of the ninth moon (28th October, 1933).

I decided that he was entitled to be paid rent up to the date of the sale of the property by the Sheriff namely 26th October, 1933. I took the view that the Court ought to apply, by analogy, the provisions of Section 739 of the Civil Procedure Code.

That Section is not, in terms, applicable, for two reasons:—

(a) it only applies where the landlord has issued a writ of distress, and

(b) it only applies where moveable property has previously been seized under a writ of execution.

But in proper cases the Court affords equitable redress to the Landlord (cf. *Yates* v. *Ratledge*, 5 Hurlstone and Norman, p. 249).

As regards reason (a); the Court should, in my opinion, regard the present application as equivalent to an application for a writ of distress; if the property had remained in the hands of the defendants or of the Sheriff, the landlord could have distrained, and since the Court has, without hearing the landlord, in an action in which the landlord was not a party, deprived the landlord of his right to distrain—(and I hold that the landlord cannot distrain on goods in the custody of the Court)—the Court should grant the landlord equitable relief.

As regards reason (b); as the section gives priority to the landlord over an execution-creditor, and as Section 692 gives priority to an execution-creditor over a person who has obtained an order for attachment before judgment, *a fortiori* the Court ought, in the exercise of its equitable jurisdiction, to give the landlord priority over a person who has obtained an order for attachment before judgment.

The further question arises, whether the landlord can recover after the property has been sold: the answer is that he can (cf. *Arnitt* v. *Garnett*, 3 Barnewall and Alderson, p. 440).

Another question arises, whether the landlord can recover rent which accrues due after the Sheriff has secured the property; in England, the landlord could not do so, because the Courts have held that his right is restricted by the express words of a statutory enactment to rent due at the time of the seizure (*Hoskins* v. *Knight*, 1 Maule and Selwyn, p. 245); I hold, however, that Section 739 does not, either expressly or by necessary implication, restrict the landlord's right to rent due at the time of the seizure.

Finally, the question arises whether the rent is apportionable: I hold that under Section 3 of the Apportionment Ordinance, 1928, the rent is apportionable, and that the landlord may recover the rent due in respect of 28 days, that is, twenty-eight thirtieths of $260, or $242.66.

Order accordingly.

Solicitors for the landlord—*Wee Swee Teow & Co.*

Solicitors for the Plaintiff—*Mallal & Namazie.*

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

January, 8, 1934

AW BOON HAW v. CHEAH LOON GHEE.

[SINGAPORE CIVIL SUIT No. 888 of 1933]

Labuan Lands—Equitable mortgage of land in Labuan by deposit of title deeds.

An equitable mortgage of land in Labuan can be validly created by deposit of title deeds.

Motion for Judgment.

The Defendant was the owner of land and buildings in Labuan, holding the same under a Crown Lease for 999 years from the 1st July 1902 which lease was made in that year. In 1929 the Defendant was indebted to the Plaintiff in the sum of $10,000 for money lent, in respect of which he gave a Promissory Note to the Plaintiff dated 7th February, 1929. He also on the same day deposited with the Plaintiff the title deeds of his said lands in Labuan. The deposit was factual and verbal and was unaccompanied by any memo. of deposit. The Plaintiff sued the Defendant claiming a declaration that by virtue of the deposit of the title deeds the Plaintiff was an equitable mortgagee of the said lands in Labuan and for an account and for enforcement of the mortgage by sale or foreclosure and for costs and consequential relief. The Plaintiff duly filed his Statement of Claim but the Defendant filed no Defence whereupon the Plaintiff moved for Judgment in default of defence.

Laycock for the Plaintiff:—

Labuan was ceded to the Crown by the Sultan of Brunei on 18th December, 1846. The cession was confirmed by the treaty of 24th May, 1847. On cession the law of England as it then existed must be taken to be the governing law of Labuan (*Ong Cheng Neo* v. *Yeap Cheah Neo*, 6 L.R.P.C. at p. 393). The law of Labuan now is therefore the law of England as at the 18th December 1846 with such alterations therein as have since been made by any Imperial or local Statutes. For the present purpose there is no difference between the law of England as on the 18th December, 1846 and the 24th May, 1847.

It was settled law in England long before 1846 that an equitable mortgage could be created by deposit of title deeds [Lord Eldon in *Ex parte Wetherell*, 11 Vesey Jr. 398 at p. 401 (1805 A.D.)] As to the alterations made in law of England as applicable to Labuan since 1846, (i) Labuan Ordinance No. 7 of 1849 provided for registration of deeds only, not registration of title properly so called (ii) the Labuan Ordinance of the S.S. of 1907 continued in force Labuan Ordinance No. 7 of 1849 but excluded Labuan from operation of the S.S. Registration of Deeds Ordinance 1886 and the Conveyancing and Law of Property Ordinance 1886 and so did not alter the then existing position (iii) S.S. Ordinance No. 3 of 1911 continued this position (iv) S.S. Ordinonce No. 127 of the 1920 Revised Edition did in fact repeal Labuan Ordinance 7 of 1847 but incorporated all its relevant provisions and made no other material change in the law (v) the 1925 revision of the S.S. Ordinances made no change in this position.

So that at all material times and in all material questions the law of Labuan was in effect the law of England as at 1847 plus S.S. Ordinance No. 127 of the 1925 revision.

The S.S. Registration of Deeds Ordinance does not invalidate an equitable mortgage by deposit (*Ho Hong Bank Ltd.* v. *Teo Chin Chay*, 1929 S.S.L.R. 195 and cases there quoted). The same applies to the provisions for registration of deeds in Ordinance No. 127. Therefore equitable mortgage by deposit of title deeds can be validly created over land in Labuan.

C. da Silva for the Defendant.

MILLS, J. delivered a short oral Judgment for the Plaintiff for the relief prayed.

Judgment accordingly.

Solicitors for the Plaintiff—*Braddell Brothers.*

Solicitor for the Defendant—*Claude da Silva.*

THE END OF THE STRAITS SETTLEMENTS OFFICIAL REPORTS.